

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 1285

Short Title: Reduce Food Tax.

(Public)

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Sponsors: Representatives Luebke; and Easterling.

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Referred to: Finance.

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May 10, 1991

1 A BILL TO BE ENTITLED  
2 AN ACT TO REDUCE THE STATE SALES TAX ON FOOD.  
3 The General Assembly of North Carolina enacts:

4 Section 1. G.S. 105-164.3 is amended by adding a new subdivision after  
5 subdivision (5) to read:

6 "(5a) The term 'food for human consumption' means food purchased for  
7 preparation or consumption off the premises of the seller. The term  
8 includes the following:

9 a. Food products packaged by the manufacturer in the usual and  
10 customary container used for the particular type of food product  
11 and delivered intact in the container by the retailer to the  
12 purchaser for consumption off the premises of the retailer.

13 b. Basic food items such as fruit, vegetables, meat, dairy and  
14 poultry products, cereals, and bread and other bakery products;  
15 and other food and food products to be used in the home except  
16 those excluded in this subsection.

17 c. Prepared meals or foods sold by grocery stores, supermarkets,  
18 or any other similar business unless the business provides  
19 facilities for the customers to consume the meals or foods on  
20 the premises, in which case such meals or foods sold for  
21 consumption on the premises are taxable.

22 d. Prepared meals served in a boarding house, if the meals are  
23 served only to permanent roomers of the boarding house and

1                    the charge for the meals is included in the weekly or monthly  
2                    charge for the room of each boarder.

3                    The term does not include:

- 4                    a.    Alcoholic beverages as defined in G.S. 105-113.68, dry or  
5                    liquid cocktail mixes, and soft drinks, soft drink powders, and  
6                    syrups subject to the soft drink tax under Article 2B of Chapter  
7                    105.  
8                    b.    Candy and other confectionaries, chewing gum, popped corn  
9                    wherever sold, and all preparations sold as dietary supplements.  
10                   c.    Prepared meals or foods sold and served on or off the premises  
11                   by restaurants, cafes, cafeterias, delicatessens, drug stores,  
12                   concession stands, 'fast-food' businesses that sell prepared  
13                   meals or foods on a 'take-out' basis, and any other establishment  
14                   or enterprise, mobile or otherwise, that maintains facilities,  
15                   equipment, services, or inventory for the sale of meals, snacks,  
16                   sandwiches, and other prepared food to customers. Prepared  
17                   meals furnished to employees in any of these places as part of  
18                   their compensation are not taxable.  
19                   d.    Food sold through vending machines."

20                   Sec. 2. G.S. 105-164.4(a) is amended by adding a new subdivision to read:

21                   "(5) At the rate of two percent (2%) of the sales price of food for human  
22                   consumption, as defined in G.S. 105-164.3, but not including food  
23                   otherwise exempt from tax as provided in this Article."

24                   Sec. 3. G.S. 105-164.10 reads as rewritten:

25                   **"§ 105-164.10. Retail bracket system.**

26                   For the convenience of the retailer in collecting the tax due ~~at the rate of three~~  
27 ~~percent (3%) and to facilitate the administration of this Article, every retailer engaged in~~  
28 ~~or continuing within this State in a business for which a license, privilege or excise tax~~  
29 ~~is required by this Article shall add to the sale price and collect from the purchaser on~~  
30 ~~all taxable retail sales an amount equal to the following:~~

- 31                   (1) ~~No amount on sales of less than 10¢.~~  
32                   (2) ~~1¢ on sales of 10¢ and over but not in excess of 35¢.~~  
33                   (3) ~~2¢ on sales of 36¢ and over but not in excess of 70¢.~~  
34                   (4) ~~3¢ on sales of 71¢ and over but not in excess of \$1.16.~~  
35                   (5) ~~Sales over \$1.16—straight 3% with major fractions governing.~~

36                   ~~Use of the above bracket does not relieve the retailer from the duty and liability to~~  
37 ~~remit to the Secretary an amount equal to three percent (3%) of the gross receipts~~  
38 ~~derived from all taxable retail sales subject to the three percent (3%) rate during the~~  
39 ~~taxable period.~~

40                   ~~Whenever a sales or use tax is due at a rate of less than three percent (3%), the tax~~  
41 ~~shall be computed by multiplying the sales or purchase price by the applicable rate and~~  
42 ~~by rounding the result off to the nearest whole cent. The use of this method in~~  
43 ~~computing the sales or use tax shall not relieve a taxpayer from the duty and liability of~~  
44 ~~remitting to the Secretary an amount equal to the applicable rates times gross receipts~~

1 ~~subject to taxation at the lesser rates.~~ under this Article, the Secretary shall prescribe  
2 tables that compute the tax due on sales by rounding off the amount of tax due to the  
3 nearest whole cent. The Secretary shall issue a separate table for each rate of tax that  
4 may apply to a sale, including the rates established in G.S. 105-164.4 and combined  
5 State and local rates. Use of the tables prescribed by the Secretary does not relieve a  
6 retailer of liability for the applicable rate of tax due on the gross receipts or net taxable  
7 sales of the retailer."

8 Sec. 4. G.S. 105-465 reads as rewritten:

9 **"§ 105-465. County election as to adoption of local sales and use tax.**

10 The board of elections of any county, upon the written request of the board of county  
11 commissioners thereof, or upon receipt of a petition signed by qualified voters of the  
12 county equal in number to at least fifteen percent (15%) of the total number of votes  
13 cast in the county, at the last preceding election for the office of Governor, shall call a  
14 special election for the purpose of submitting to the voters of the county the question of  
15 whether a one percent (1%) sales and use tax as hereinafter provided will be levied.

16 The special election shall be held under the same rules and regulations applicable to  
17 the election of members of the General Assembly. No new registration of voters shall be  
18 required. All qualified voters in the county who are properly registered not later than 21  
19 days (excluding Saturdays and Sundays) prior to the election shall be entitled to vote at  
20 said election. The county board of elections shall give at least 20 days' public notice  
21 prior to the closing of the registration books for the special election.

22 The county board of election shall prepare ballots for the special election which shall  
23 contain the words, 'FOR the one percent (1%) local sales and use tax ~~only~~ on those items  
24 presently covered by the three percent (3%) sales and use tax,' tax and on food covered  
25 by the two percent (2%) sales and use tax,' and the words, 'AGAINST the one percent  
26 (1%) local sales and use tax ~~only~~ on those items presently covered by the three percent  
27 (3%) sales and use tax,' tax and on food covered by the two percent (2%) sales and use  
28 tax,' with appropriate squares so that each voter may designate his vote by his cross (X)  
29 mark.

30 The county board of elections shall fix the date of the special election; provided,  
31 however, that the special election shall not be held on the date of any biennial election  
32 for county officers, nor within 60 days thereof, nor within one year from the date of the  
33 last preceding special election under this section."

34 Sec. 5. G.S. 105-467 reads as rewritten:

35 **"§ 105-467. Scope of sales tax.**

36 The sales tax which may be imposed under this Article is limited to a tax at the rate  
37 of one percent (1%) of:

- 38 (1) The sales price of those articles of tangible personal property now  
39 subject to the three percent (3%) sales tax imposed by the State under  
40 G.S. 105-164.4(a)(1) and ~~(4b); (4b)~~ or the two percent (2%) sales tax  
41 imposed by the State under G.S. 105-164.4(a)(5);
- 42 (2) The gross receipts derived from the lease or rental of tangible personal  
43 property when the lease or rental of the property is subject to the three

1 percent (3%) sales tax imposed by the State under G.S. 105-  
2 164.4(a)(2);

3 (3) The gross receipts derived from the rental of any room or lodging  
4 furnished by any hotel, motel, inn, tourist camp or other similar  
5 accommodations now subject to the three percent (3%) sales tax  
6 imposed by the State under G.S. 105-164.4(a)(3); and

7 (4) The gross receipts derived from services rendered by laundries, dry  
8 cleaners, cleaning plants and similar type businesses now subject to the  
9 three percent (3%) sales tax imposed by the State under G.S. 105-  
10 164.4(a)(4).

11 The sales tax authorized by this Article does not apply to sales that are taxable by the  
12 State under G.S. 105-164.4 but are not specifically included in subdivisions (1) through  
13 (4) of this section.

14 The exemptions and exclusions contained in G.S. 105-164.13 and the refund  
15 provisions contained in G.S. 105-164.14 shall apply with equal force and in like manner  
16 to the local sales and use tax authorized to be levied and imposed under this Article. A  
17 taxing county shall have no authority, with respect to the local sales and use tax  
18 imposed under this Article to change, alter, add to or delete any refund provisions  
19 contained in G.S. 105-164.14, or any exemptions or exclusions contained in G.S. 105-  
20 164.13 or which are elsewhere provided for.

21 The local sales tax authorized to be imposed and levied under the provisions of this  
22 Article shall apply to such retail sales, leases, rentals, rendering of services, furnishing  
23 of rooms, lodgings or accommodations and other taxable transactions which are made,  
24 furnished or rendered by retailers whose place of business is located within the taxing  
25 county. The tax imposed shall apply to the furnishing of rooms, lodging or other  
26 accommodations within the county which are rented to transients. For the purpose of  
27 this Article, the situs of a transaction is the location of the retailer's place of business."

28 Sec. 6. G.S. 105-468 reads as rewritten:

29 "**§ 105-468. Scope of use tax.**

30 The use tax which may be imposed under this Article shall be at the rate of one  
31 percent (1%) of the cost price of each item or article of tangible personal property when  
32 it is not sold but used, consumed or stored for use or consumption in the taxing county,  
33 except that no tax shall be imposed upon tangible personal ~~property~~ property, other than  
34 food taxable under G.S. 105-164.4(a)(5), when the property would be taxed by the State  
35 at a rate of other than three percent (3%) if it were taxable under G.S. 105-164.6.

36 Every retailer engaged in business in this State and in the taxing county and required  
37 to collect the use tax levied by G.S. 105-164.6 shall also collect the one percent (1%)  
38 use tax when such property is to be used, consumed or stored in the taxing county, one  
39 percent (1%) use tax to be collected concurrently with the State's use tax; but no retailer  
40 not required to collect the use tax levied by G.S. 105-164.6 shall be required to collect  
41 the one percent (1%) use tax. The use tax contemplated by this section shall be levied  
42 against the purchaser, and the purchaser's liability for the use tax shall be extinguished  
43 only upon payment of the use tax to the retailer, where the retailer is required to collect

1 the tax, or to the Secretary of Revenue, or to the taxing county, as appropriate, where  
2 the retailer is not required to collect the tax.

3 Where a local sales or use tax has been paid with respect to tangible personal  
4 property by the purchaser, either in another taxing county within the State, or in a taxing  
5 jurisdiction outside the State where the purpose of the tax is similar in purpose and  
6 intent to the tax which may be imposed pursuant to this Article, the tax paid may be  
7 credited against the tax imposed under this section by a taxing county upon the same  
8 property. If the amount of sales or use tax so paid is less than the amount of the use tax  
9 due the taxing county under this section, the purchaser shall pay to the Secretary of  
10 Revenue or to the taxing county, as appropriate, an amount equal to the difference  
11 between the amount so paid in the other taxing county or jurisdiction and the amount  
12 due in the taxing county. The Secretary of Revenue or the taxing county, as  
13 appropriate, may require such proof of payment in another taxing county or jurisdiction  
14 as is deemed to be necessary. The use tax levied under this Article is not subject to  
15 credit for payment of any State sales or use tax not imposed for the benefit and use of  
16 counties and municipalities. No credit shall be given under this section for sales or use  
17 taxes paid in a taxing jurisdiction outside this State if that taxing jurisdiction does not  
18 grant similar credit for sales taxes paid under this Article."

19 Sec. 7. G.S. 105-470, 105-485, and 105-500 and Article 41 of Chapter 105 of  
20 the General Statutes are repealed.

21 Sec. 8. Chapter 1096 of the 1967 Session Laws is amended as follows:

- 22 (1) The title is amended by deleting the phrase "TAX." and substituting  
23 the phrase "TAX AND UPON FOOD."
- 24 (2) Section 4 is amended by deleting the phrase "105-164.4(a)(1) and  
25 (4b)" and substituting the phrase "105-164.4(a)(1) and (4b) or the two  
26 percent (2%) sales tax imposed by the State under G.S. 105-  
27 164.4(a)(5)".
- 28 (3) Section 5 is amended by deleting the phrase "property when the  
29 property" and substituting the phrase "property, other than food  
30 taxable under G.S. 105-164.4(a)(5), when the property".
- 31 (4) Section 7 is repealed.
- 32 (5) Section 10.1(d) is amended by deleting the phrase "Items on Which the  
33 State Now Imposes a Three Percent (3%) Sales Tax." and substituting  
34 the phrase "Scope."

35 Sec. 9. (a) Approval under the Local Government Sales and Use Tax Act,  
36 Article 39 of Chapter 105 of the General Statutes, or under the Mecklenburg County  
37 Sales and Use Tax Act, Chapter 1096 of the 1967 Session Laws, as amended, of one  
38 percent (1%) local sales and use taxes in addition to the three percent (3%) State sales  
39 and use taxes includes approval of one percent (1%) local sales and use taxes in addition  
40 to the two percent (2%) State sales and use taxes on food.

41 (b) Approval under the Supplemental Local Government Sales and Use Tax Act,  
42 Article 40 of Chapter 105 of the General Statutes, of one-half percent (1/2%) local sales  
43 and use taxes in addition to the one percent (1%) local sales and use taxes and three  
44 percent (3%) State sales and use taxes includes approval of one-half percent (1/2%)

1 local sales and use taxes in addition to the one percent (1%) local sales and use taxes  
2 and the two percent (2%) State sales and use taxes on food.

3 (c) Approval under the Additional Supplemental Local Government Sales and  
4 Use Tax Act, Article 42 of Chapter 105 of the General Statutes, of one-half percent  
5 (1/2%) local sales and use taxes in addition to the one and one-half percent (1-1/2%)  
6 local sales and use taxes and three percent (3%) State sales and use taxes includes  
7 approval of one-half percent (1/2%) local sales and use taxes in addition to the one and  
8 one-half percent (1-1/2%) local sales and use taxes and the two percent (2%) State sales  
9 and use taxes on food.

10 Sec. 10. This act becomes effective July 1, 1991, and applies to sales made  
11 on or after that date.